COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own motion pursuant to G.L. c. 159, §§ 12 and 16, into Verizon New England Inc., d/b/a Verizon Massachusetts' provision of Special Access Services	)	**D.T.E. 01-34**

COMMENTS OF VERIZON MASSACHUSETTS

Verizon Massachusetts ("Verizon MA") submits these Comments in response to the March 26, 2002, Opposition and Motion for Interim Relief filed by AT&T Communications of New England, Inc. ("AT&T") requesting that: the Department: (1) reject Verizon MA's arguments regarding witness unavailability on the Department's proposed rescheduled hearing dates; and (2) require that Verizon MA begin immediate reporting of interstate and intrastate special access service performance in Massachusetts in accordance with the same metrics adopted in New York and agreed to in New Hampshire. Not only is AT&T's Motion unreasonably harsh in tone, but it does not conform to the truth. Indeed, AT&T's arguments are unfairly based on misstated or distorted facts and false accusations regarding Verizon MA's conduct in this proceeding and, therefore, should be rejected by the Department.

AT&T's principal objection to the alternative hearing dates proposed in Verizon MA's March 19, 2002, letter, is based on the Company's alleged late-filing – or subsequent correction – of some discovery responses. While there have admittedly been

delays in responding to some discovery requests by Verizon MA and other parties in this case,[1] the cause of Verizon MA's delays is justified, contrary to AT&T's claims.[2] Likewise, Verizon MA has responsibly corrected inaccuracies in certain data responses as soon as they were identified. Nevertheless, this should have no bearing whatsoever on whether the Department should move the hearing dates by 18 business days, *i.e.*, from April 29 through May 1 *to* May 28 through 30, as requested by Verizon MA due to the unavailability of the Company's four witnesses. After all, the postponement of the original hearing dates (*i.e.*, March 25 through 27) was to accommodate the Department's needs, and was not the result of any action taken by Verizon MA.[3] Contrary to the implications contained in AT&T's Motion, Verizon MA is not to blame.

AT&T's Motion further alleges that Verizon MA's performance results show poorer service to wholesale carrier customers than retail customers when ordering high capacity facilities. AT&T Motion, at 7. Even if AT&T's allegations were true – which

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1 For example, WorldCom's late-filed response to Verizon MA's first set of discovery requests (only one question) served on February 8, 2002, was submitted after Verizon MA filed its testimony, *i.e.*, February 28, 2002. This delay afforded Verizon MA no opportunity to address WorldCom's allegations in testimony. WorldCom did not fully respond to that discovery request until March 13, 2002.

2 The complexity and sheer number of discovery requests asked of Verizon MA far exceed those asked of other parties in this proceeding. While Verizon MA has responded to over 150 discovery requests, other parties have answered only a handful of questions. Likewise, the type of data sought from Verizon is far more complex that any information requested of other parties in this proceeding, and required that Verizon conduct special studies to obtain the data because it was not routinely tracked or sorted in the manner required by the discovery requests (*e.g.*, interstate versus intrastate; access versus non-access).

3 The fact that the original hearing dates were postponed may, in fact, be the result of AT&T and WorldCom's action to delay their filing of rebuttal testimony from March 13 until March 20, 2002, *i.e.*, only one *full* business day before hearings were to begin. That extension was granted despite the fact that approximately 95 percent of Verizon MA's outstanding discovery replies were filed "on-time," *i.e.*, by March 4, 2002. Indeed, with the exception of Verizon MA's Reply to WCOM/AT&T No. 4-17 (Supplemental), the remaining four "late-filed" discovery replies were in response to Department (not AT&T or WorldCom) requests, and were filed on or before March 8, 2002.

they are not, the Motion is premature and completely unwarranted. AT&T's erroneous conclusions raise numerous factual and legal issues that the Department cannot resolve without evidentiary hearings and briefing. If granted, AT&T's Motion would prejudge the outcome of this proceeding by imposing regular special access reporting requirements *immediately* on Verizon MA before the adjudicatory process is completed. AT&T has argued this before in this proceeding – and lost. *See* D.T.E. 01-34, Hearing Officer Ruling, dated May 23, 2001. AT&T's attempt here to reargue that point should, likewise, be rejected by the Department. Accordingly, the Department should deny AT&T's Motion and await the development of a record before reaching any conclusions.

I. ARGUMENT

A. AT&T's Opposition to Verizon MA's Alternative Schedule Is Unreasonable and Would Undermine the Efficient Conduct of Evidentiary Hearings in This Matter.

AT&T contends that the hearings should proceed on April 29 through May 1, 2002, as recently proposed by the Department. AT&T vigorously objects to Verizon MA's alternative proposal to schedule hearings May 28 through 30, 2002. As fully explained in Verizon MA's March 19, 2002, letter, this change is necessary because Verizon's panel of four witnesses is unavailable to testify on the Department's new hearing dates due to unavoidable scheduling conflicts.[4]

Although these recent developments were unforeseeable, AT&T accuses Verizon MA of ulterior motives, and claims that the Company's action further demonstrates its

[4] The dates of May 28 through 30 are the earliest *consecutive* days available for the four Verizon witnesses. This is true regardless of whether there are three or two days of hearings, as AT&T and WorldCom suggest. AT&T's Motion, at 9; WorldCom's March 26, 2002, Letter, at 1.

unwillingness to cooperate in this proceeding and its failure to dedicate the necessary resources to this case. AT&T Motion, at 3-4. AT&T is wrong on all counts.

First, AT&T criticizes Verizon for missing discovery deadlines early on in the case – before the scope of permissible discovery was established and the type of data sought was clearly defined. Thus, AT&T's statements are grossly misleading.

For instance, AT&T and WorldCom sought interstate and intrastate special access data, as well as retail special services data, in its first and second set of discovery requests. The Department did not rule on the permissible scope of discovery until October 25, 2001. On November 2, 2001, Verizon MA began to respond to those 41 discovery requests, and included the following statement in a number of its discovery replies:

> Due to circumstances beyond Verizon's control that occurred in New York on September 11, 2001, the historical records necessary to extract 2000 data for wholesale (special access) services are not readily available – and indeed may no longer exist at all on a mechanized basis. This is because the vast majority of those records resides in databases in Verizon's central office located at 140 West Street, New York in the immediate vicinity of "Ground Zero." For its retail (special) services, Verizon MA does not have access to historical records dating back to 1998 on a mechanized basis. If available, such data would only exist in archives and would require a considerable manual work effort to obtain.
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> The magnitude of the work involved to conduct special studies to produce information relating to Verizon MA's retail and wholesale services in the form requested is substantial. Data systems and computer programs must be retrieved from 140 West Street to conduct any work required for wholesale services. In addition, new computer programs would have to be written to obtain data for both retail and wholesale services to accommodate the request. Accordingly, in an effort to be responsive to this request, Verizon MA is willing to undertake the special studies required to provide the available data for wholesale and

> retail special services for 2001. Verizon MA's best estimate at this time is that it will take at least 3-4 weeks to complete all of the special studies for 2001.

AT&T's criticism of Verizon is unjust because it completely ignores the significant impact that the events of September 11, 2001, had on Verizon's ability to produce the data requested on a timely basis. As explained above in its discovery replies, Verizon's underlying wholesale data resided in active databases located at 140 West Street, New York – the precise site of the World Trade Center attack. Verizon could not even access the building to assess the condition of its databases, let alone attempt to extract the source data. Once Verizon was able to assess the level of damage, Verizon began the time-consuming and tedious process of reconstructing that data to respond to outstanding discovery requested in this proceeding.

Contrary to AT&T's claims, Verizon MA did not commit to provide the data in three to four weeks, but rather indicated that "at least 3-4 weeks" was its "best estimate" to complete the necessary special studies. Special studies were required because Verizon does not capture special access data in the level of detail or in the format requested by AT&T and WorldCom. Because Verizon does not maintain or track this data in the normal course of business, a manual work effort was required to extract and compile the data sought by AT&T and WorldCom, and then display that data in the different variations requested by those parties in numerous discovery requests.

While Verizon MA would have clearly been within its rights to refuse to undertake such burdensome special studies, Verizon MA instead attempted to be responsive to AT&T's and WorldCom's requests and produced the data in the form requested by the parties as soon as it became available. Ironically, one example of Verizon MA's unrelenting efforts is found in its replies to WCOM/AT&T No. 1-18,

which AT&T cites in its Motion as an example of Verizon's alleged chronic lateness. AT&T Motion, at 6. In that request, Verizon was asked to produce average performance interval data in a manner that did not conform to Verizon's current tracking of such data.[5] This is why Verizon MA was unable to produce complete wholesale and retail data until March 8, 2002. The only alternative to the unavoidable delay in responding to this and some other discovery requests would have been for Verizon to produce *only* that data which was readily available and *not* undertake the extensive special studies required to accommodate the parties' requests.

Likewise, Verizon MA submitted its corrections to filed discovery responses as soon as errors or omissions were identified. Most of those corrections were the result of a different interpretation or misunderstanding of the data required in responding to AT&T's and WorldCom's discovery requests. The Department's technical sessions in this proceeding – in particular the December 13th session at which all four Verizon witnesses appeared – were invaluable in providing a dialogue among the parties that shed light on those differences. This clarified for Verizon MA the type of data sought by AT&T and WorldCom, which was not data that Verizon customarily maintained as part of its normal operations.

As a result, subsequent to the December 13th technical session, Verizon MA corrected various previously filed discovery responses to ensure the provision of accurate and responsive information. Since the December 13th technical session, Verizon MA has

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5 Likewise, Verizon does not maintain installation ("I-Code) retail data in the manner requested and, therefore, was required to develop such data specifically in response to WCOM/AT^T No.1-22. *See* Verizon MA's Second Supplemental Reply to DTE 4-1.

received 72 discovery requests.[6] Verizon MA's "on-time" performance for responding to those requests has been approximately 95 percent. This is an excellent track record, and refutes AT&T's accusations that Verizon MA is inattentive to this proceeding.

Second, AT&T falsely accuses Verizon MA of filing "erroneous testimony." AT&T Motion, at 1. On March 19, 2002, Verizon MA made only one factual correction to its testimony, which affected a total of three of the 50 pages of testimony, as well as one page of the previously filed Attachment B. Clearly, this does not constitute erroneous testimony. If it did, then the same standard should apply to AT&T's testimony, which was corrected by e-mail on February 20, 2002, in this proceeding.[7]

Third, AT&T alleges that Verizon has not given the proper attention to this case or taken the matter seriously. AT&T Motion, at 4. This is untrue. Verizon MA has unquestionably devoted the necessary resources to this proceeding. Indeed, one example of the high-level attention paid to this case is that three of the witnesses testifying in this case are senior managers (*i.e.*, vice presidents of their respective organizations) with national and/or region-wide responsibilities. Although it may be difficult to reschedule hearings on short notice to accommodate these witnesses' schedules,[8] Verizon MA believes that it is more beneficial to extend the hearing dates to present all Verizon

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6 Verizon MA received 79 discovery requests prior to the December 13th technical session, for a total number of 151 requests to date. This number is, however, deceiving because many requests contained multiple parts, and the majority required special studies to obtain the data requested, as noted above.

7 AT&T further ignores its own recent actions in D.T.E. 01-31, where it corrected the testimony of Deborah S. Waldbaum on December 18, 2001, the day before Verizon MA's witnesses were scheduled to testify. Even in this shortened timeframe, Verizon did not object or claim that AT&T had filed "erroneous" testimony.

8 AT&T's allegation that Verizon's difficulty in rescheduling hearings in D.T.E. 01-34 is somehow related to the Company's Section 271 proceedings is wrong. The witnesses involved in D.T.E. 01-34 are not integral to the Section 271 proceedings and, therefore, this has no effect on their unavailability prior to May 28th for consecutive hearing dates.

witnesses as a panel. This is the most efficient way to manage the process because it will ensure that the appropriate witness is available to respond to the potentially wide range of questions from the Department and the parties. The first date that all four witnesses are available for either two or three consecutive days of evidentiary hearings is May 28th.

Finally, as an alternative, AT&T suggests that the Department proceed with hearings on or about April 29th, and require that Verizon's witnesses testify separately – on different days beginning on that date and thereafter. AT&T Motion, at 9-10. AT&T's recommendation makes no sense. It is not only inefficient, but could potentially prolong the hearing process by expanding the total number of days and spreading it out over an extended period of time.

Requiring Verizon's witnesses to appear separately could conceivably result in questions being directed to the wrong witness, which could constrain follow-up questions. This is particularly true because of the interrelationship between the witnesses' various areas of responsibility and the fact that Verizon's witnesses provided combined responses to multi-part discovery requests relating to retail and wholesale special services. The whole purpose of presenting Verizon MA's witnesses as a panel is to ensure that the most appropriate witness is available for questioning at the same time, without having to recall witnesses.

Accordingly, there is nothing to be gained by splitting the hearing dates. Despite the unforeseen delay, it is preferable, on balance, to reschedule the evidentiary hearings for May 28 through 30,which is *only* 18 business days later than the Department's proposed dates. The presence of Verizon's entire witness panel will be more efficient

and productive for the Department and all parties concerned, and will actually expedite the process in the long run.

B. AT&T's Motion for Interim Relief Is Unwarranted and Merely Reargues Prior Motions Rejected by the Department in this Matter.

The purpose of this investigation is to examine Verizon MA's provision of special access services under its intrastate access tariff, M.D.T.E. No. 15. *Vote and Order*, at 1. As directed by the Department, Verizon MA has filed two special access services reports on May 4 and September 7, 2001, containing intrastate and interstate data on Verizon's provisioning, and maintenance and repair performance over the past year in Massachusetts. Verizon MA has also submitted panel testimony, and responded to extensive discovery requests, as discussed above.

In its Motion, AT&T seeks interim relief, alleging that it has been "harmed" by Verizon's delays in this proceeding. AT&T Motion, at 2. What AT&T seeks is a ruling by the Department – before any evidence has been presented – that Verizon MA must begin immediately to submit monthly special access performance reports in Massachusetts. This would circumvent the reasonable and fair process established by the Department for conducting this investigation consistent with the requirements of Mass. General Laws c. 159, § 16.

In essence, the relief sought by AT&T is akin to a "summary judgment" from the Department. Yet, AT&T has offered no proof of alleged harm or that it will ultimately prevail on the merits of the case. Indeed, AT&T has not even declared how many (if any) intrastate special access circuits to which it currently subscribes in Massachusetts. As noted previously, approximately 99 percent of the circuits in Massachusetts are provided under Verizon's interstate tariff. As recognized by the Department, the Federal

Communications Commission ("FCC") has exclusive jurisdiction over such services, and thus state regulation over rates, terms and conditions, and quality standards would be legally prohibited.

AT&T urges the Department to require Verizon MA's immediate submission of monthly performance reports for two reasons - first, because Verizon allegedly has a "monopoly over the market for special access;" and second, because Verizon already provides monthly reports in New York and New Hampshire. AT&T Motion, at 4, 8-9. Both arguments are fundamentally flawed.

First, the FCC has recently found that the special access services market in Massachusetts is highly competitive and therefore, there should be less regulation - not more.[9] Contrary to AT&T's claims, the competitive pressures and demands of a sophisticated customer base obviate the need for performance measurements for such services.[10] Thus, the Department should not grant the interim relief sought by AT&T's Motion because it cannot fully assess the implications of any such decision without a

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9 On March 22, 2002, the FCC granted Verizon's request for Phase I relief for end-user channel termination for the Boston, Worcester and Springfield Metropolitan Statistical Area ("MSAs"), as well as its request for the more stringent Phase II relief for the Boston and Worcester MSAs for dedicated transport. *See In the Matter of Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD Nos. 01-27, *Memorandum Opinion and Order* (rel. March 22, 2002). By granting Verizon's recent requests for special access services pricing flexibility, the FCC clearly demonstrates the competitiveness of special access services in each of the major MSAs in Massachusetts. *See also In the Matter of Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD Nos. 00-24, 00-28, *Memorandum Opinion and Order* (rel. March 14, 2001) (granting Phase II relief for the Springfield MSA and Phase I relief for the Boston MSA for dedicated transport).

10 AT&T's recommendation to impose performance metrics on Verizon MA at this time and subsequently "develop remedies" is also unfair, discriminatory and self-serving. AT&T Motion, at 9. In a competitive market, it is the market that determines performance levels – not regulatory requirements. Although competing carriers operating in Massachusetts have the ability to build their own infrastructure, they selectively use Verizon MA's facilities where it is economical or timely for them to do so. Since other carriers can – and do – provide their own special access circuits to their end user customers, they should <u>not</u> be treated differently. Thus, if at the conclusion of this proceeding, the Department determines that performance standards are warranted, the only fair approach is to apply the *same* standards to all carriers.

complete record in which the competitive consequences of proposals, such as AT&T's, are fully explored.

Moreover, the establishment of special access performance measurements is not warranted in Massachusetts because intrastate special access circuits account for merely *one* percent of the total number of interstate and intrastate circuits, with *only* approximately 100 intrastate circuits provisioned annually. Verizon MA Panel Testimony, at 1. The Department has repeatedly acknowledged that the FCC has jurisdictional authority over interstate special access circuits. *See e.g.*, D.T.E. 01-34, *Interlocutory Order*, at 11 (August 9, 2001). The FCC already has a proceeding underway (*i.e.*, CC Docket 01-321) to determine whether and under what terms and conditions performance standards of interstate special access services should be developed. Accordingly, that pending FCC proceeding is the proper forum for reviewing the appropriate treatment of Verizon MA's interstate special access circuits provided under federal tariff, which constitute the vast majority of Verizon MA's special access services in Massachusetts.

Second, AT&T's analogy to Verizon's reporting requirements in New York and New Hampshire is misplaced. In New York, performance metrics were adopted by the New York Public Service Commission ("NYPSC") after it issued its findings in a final decision in its special access investigation[11] – not in the context of an interlocutory order, as AT&T recommends here. Further, AT&T omits the fact that the NYPSC subsequently concluded that all facilities-based providers should be treated alike for reporting purposes

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11 *See Opinion and Order Modifying Special Services Guidelines for Verizon New York, Conforming Tariff, and Requiring Performance Reporting*, Case Nos. 00-C-2051 & 92-C-0665 (rel. June 15, 2001).

and imposed comparable reporting requirements on all providers (not only Verizon).[12] Likewise, the circumstances in New Hampshire are distinguishable from Massachusetts because the stipulation to which AT&T refers arose in the context of Verizon's Section 271 proceeding. AT&T Motion, at 8-9. Accordingly, AT&T's arguments are disingenuous.

Verizon MA also notes that the data provided in the performance reports submitted by the Company in New York and New Hampshire are *combined* interstate and intrastate data results, and do not provide the level of detail required of Verizon MA in responding to discovery requests in this proceeding. Verizon MA has already produced ample data in this case, including current updates in its Replies to DTE 4-1, during discovery. Accordingly, it is neither necessary nor appropriate for the Department to impose <u>any</u> *regular* reporting requirements on Verizon MA at this time before the conclusion of the case, as AT&T erroneously suggests.[13]

In conclusion, the Department should reject AT&T's request for interim relief and not depart from its reasonable and appropriate adjudicatory procedures in this proceeding, which are consistent with statutory requirements. Only after the Department has taken evidence and heard the respective claims of the parties will it be in a position to assess whether there is an actual service problem requiring the establishment of specific

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12 *See Order Denying Petitions for Rehearing and Clarifying Applicability of Special Access Guidelines*, Case Nos. 00-C-2051 & 92-C-0665, at 15 (rel. Dec. 20, 2001). In that order, the NYPSC extended its Special Services Guidelines to special services providers, including competitive access providers and competitive local exchange carriers. The NYPSC specifically stated that: "only those carriers providing 50,000 or more facilities-based special access circuits, both intra-state and inter-state, will be required to report service results." *Id*.

13 Moreover, AT&T's call for Verizon MA to begin reporting immediately the same type of *combined* data that is reported in New York and New Hampshire would appear to conflict with the Department's specific conclusion that it would not make findings or fashion remedies for interstate circuits in this case. *See* D.T.E. 01-34, *Interlocutory Order*, at 9 (August 9, 2001).

standards of performance and reporting requirements. AT&T's effort to short circuit this investigation by having the Department make this determination in advance is prejudicial to Verizon and is not warranted based on current service results.

II. CONCLUSION

For the foregoing reasons, the Department should deny AT&T's Motion for Interim Relief. Verizon MA also respectfully requests that the Department reschedule evidentiary hearings for May 28 through 30, 2002. Due to scheduling conflicts, these are the earliest available *consecutive* hearing dates for Verizon's witness panel.

Verizon MA believes that the joint presentation of its witness panel is the most efficient and effective way of conducting this proceeding and, therefore, is in the best interests of the Department and all parties. Moreover, no party has demonstrated that it would be harmed by extending the hearings by 18 business days beyond the Department's most recently proposed schedule.

Respectfully submitted,

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Dated: March 29, 2002